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ABSTRACT

Hispanics--affected more than any other ethnic group by immigration laws--have a profound interest in the implementation of the Immigration Reform and Control Act of 1986. The National Council of La Raza holds the following views: (1) the proposed regulations implementing the Act are unacceptable; (2) the capacity and resources necessary for effective implementation are insufficient; and (3) the lack of public education efforts is aggravating widespread confusion and misunderstanding of the law. Without major changes in the regulations, it is clear that many eligible persons will be deterred from applying; many others will apply only to have their applications denied--not because they fail to meet the statutory criteria, but because of unduly restrictive regulations. The National Council of La Raza urges that the Immigration and Naturalization Service (INS) remove the unnecessarily restrictive and burdensome aspects of the proposed regulations, negotiate in good faith with potential "Qualified Designated Entities," expand the scope of the proposed public information campaign, and immediately cease the dissemination of misleading or inaccurate information. In order for legalization to succeed, the INS must determine that legalization is in the public interest and that maximum participation of the eligible population is essential.
(JHZ)

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TESTIMONY ON
IMPLEMENTATION OF THE IMMIGRATION
REFORM AND CONTROL ACT OF 1986
(PUBLIC LAW 99-603)

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Director of Policy Analysis
National Council of La Raza

Before the:

Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate

April 10, 1987

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STATEMENT OF CHARLES KAMASAKI
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I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am Charles Kamasaki, Director of Policy Analysis for the National Council of La Raza. The National Council is a Washington, D.C.-based, nonprofit organization dedicated to improving the socio-economic status of Americans of Hispanic descent. The National Council represents local community-based organizations operating in 32 states, the District of Columbia and Puerto Rico, who together provide education, employment, health, housing, community development, immigration and social services to about one million Hispanics annually.

As you are aware, the National Council has spent a great deal of time studying, and has produced a series of analyses and testimony on, immigration issues. We have done so for two reasons. First, immigration laws affect Hispanics -- for better and for worse -- more than any other ethnic group. Second, Hispanics have an affirmative interest in effective immigration reform. The legalization of the highly vulnerable subclass of undocumented persons living in this country has been the top legislative priority of the National Council for the past five years. We therefore have a profound interest in the implementation of the Immigration Reform and Control Act, and wish to thank the Chairman and the Subcommittee for this opportunity to express our views.

My testimony today will focus on three broad themes:

- The proposed regulations implementing the Act are unacceptable;
- The capacity and resources, the "infrastructure," necessary for effective implementation are insufficient;
- The lack of public education efforts is aggravating widespread confusion and misunderstanding of the law.

The National Council believes that the combination of unacceptable regulations, insufficient capacity and resources, and lack of public information threatens to undermine the purposes of the Act.

II. LEGALIZATION

A. Overview

Mr. Chairman, I would first like to review the rationale for legalization.

As the Subcommittee is well aware, an effective legalization program would:

- Reduce the highly exploitable subclass of undocumented persons, the existence of which is harmful to the society as a whole;
- Enable the Immigration and Naturalization Service (INS) to redirect scarce resources away from interior enforcement — which is inefficient, costly and threatens the civil rights of aliens and citizens alike — toward border enforcement, which is more cost-effective and humane;
- Permit employers dependent on this pool of labor to continue to use it, but on a lawful basis; and
- Provide comprehensive information about this population, which is essential for deterring future flows of undocumented migrants.¹

There are, to be sure, humanitarian and ethical considerations as well.

Massive deportation or "repatriation" campaigns are not only impractical, but likely to result in wholesale violations of civil rights. Moreover, those persons eligible for the program have built up equities in this country; they work hard, they pay taxes, and are otherwise law-abiding, contributing members of society.

In sum:

- An effective legalization program is in the public interest; and
- Legalization can be effective only if a significant proportion of the eligible population successfully adjusts its status.

Before going into specifics, we believe it would be useful to review the legalization experiences of other countries which have carried out similar programs. In a well-received recent analysis of such programs, former INS Acting Commissioner Doris Melsner and immigration scholars Demetrios Papademetriou and

David North summarized the results of legalization programs of seven countries, based on a consultation with Immigration experts both here and abroad sponsored by the Carnegie Endowment for International Peace. They found that:

In every case, the number of people who applied for legalization was less (by up to one-half or more) than expected. The reasons cited by foreign Immigration experts include the following: confusion or fear about eligibility requirements, limited participation by organizations trusted by immigrant communities, inadequate time and funds for publicity and outreach....2

The beginning of our own legalization program is less than one month away; unfortunately, we appear to be repeating the mistakes of other countries' programs, rather than learning from them.

B. Proposed Regulations

While the proposed regulations published on March 19 are substantially improved over the preliminary draft regulations issued earlier in the year, they are still far too restrictive; allow me to discuss several examples.

First, the definition of the "brief, casual and innocent" exception to the "continuous physical presence" requirement is unwarranted. The proposed regulations state that only absences which are (1) authorized by INS; (2) for "legitimate emergency or humanitarian purposes"; and (3) not longer than 30 days (unless a longer period is expressly granted by INS) will be considered "brief, casual and innocent."

The effect of this definition would be to exclude a substantial proportion of the eligible population. It is a common practice for many undocumented aliens, especially those residing near the border, to visit family and friends abroad during the Christmas holidays. Others may have left the country briefly after November 6, 1986, for other reasons — again, a common practice this time of year since many seasonal industries, including agriculture (except citrus), packing, canning and processing, and construction, shut down over the winter.³

Little notice was given to potential applicants that any absence without prior INS authorization would make them ineligible for the program. In fact, in

the wake of the bill's passage, INS urged potential applicants not to come to INS to apply or to obtain information.

Moreover, the legislative history does not support the prior authorization requirement; indeed, Congress carefully included a confidentiality provision designed to ensure that applicants need not reveal their identities to INS before applying or during the initial stages of the application process. It is illogical to assume that Congress would have required applicants to expose themselves to INS enforcement before applying, while allowing them to protect their identities during the application process itself.

Second, we believe that the documentation requirements are unreasonable. Evidence of identity is limited to seven specified documents, listed in descending order of preference. Employer letters and attestations from institutions to prove residence are required to follow a rigid formula, including items that may be burdensome to require or that may not be known to the person or entity completing the form.

Given that this population has previously sought to avoid detection and the creation of "paper trails," the documentation provisions in the proposed regulations are unduly restrictive. Using employment related documents as an example (such documents are preferred in proving continuous residence), it is clear that the proposed regulations would deter many eligible applicants from applying, and would deny legal status to many others who did apply.

Many undocumented aliens have worked "off the books," and were paid in cash -- at least for some part of their residence in the United States. These persons would not be able to obtain the preferred documents.

Many others have worked for firms that have changed ownership and/or management, have moved to a different location, or that no longer exist. These persons, in all probability, will not be able to obtain the preferred documents.

Even those persons lucky enough to locate their previous employers are likely to have great difficulty in meeting the rigid formula the proposed rules require. The requirement for certain items that may not be known to the employer, e.g., alien's address at the time of employment, may prevent employers from providing documents. The dual requirements for an attestation under penalty of perjury and a statement indicating an "employer's willingness to come forward and give testimony" are redundant, and will deter many employers from assisting legalization applicants, especially given many employers' fears -- both real and imagined -- of potential enforcement for immigration and other violations.

The results of these onerous documentation requirements are already beginning to emerge. Published reports have identified otherwise eligible persons who may not qualify under the restrictive documentation provisions.⁴ One immigration lawyer in Houston has estimated that 80% of those eligible for legalization will have "moderate to severe document problems."⁵ A forthcoming documentary portrays the problems that eligible persons are having in documenting their residence.⁶

The early experiences of organizations carrying out "pre-registration" activities confirms the restrictiveness of the documentation provisions. Lawyers with the International Ladies Garment Workers Union have estimated, based on actual experience with its members -- who, by virtue of their union status should be among the "easiest" applicants to document -- that only 20% of those screened to date can obtain the requisite documents.⁷

Third, excessive fees -- especially when combined with restrictive regulations -- may deter many persons from applying, particularly those with difficult or marginal cases.

The proposed rules contain a fee schedule of \$185 for an individual application, a \$50 fee for each minor child, and a family rate of \$420. The INS justifies the proposed fee schedule by suggesting that such fees are comparable to those paid by legal immigrants, and are negligible compared to the benefit

received by the individual, i.e., legal status.

The INS position is unjustified on several counts. First, it misleadingly compares two different procedures. The \$185 fee for a visa (\$35 for the petition; \$150 for the visa) is not the same as \$185 for a legalization application. Fees for comparable procedures, e.g. \$50 for registry or \$85 for a simple adjustment of status petition, are much lower.

Second, the INS position misleadingly compares two different benefits. The legal immigrant immediately obtains full permanent resident status. If successful, the legalization applicant will obtain temporary status, then will have to apply for permanent status and presumably pay another fee.

Third, if legalization were a certainty for most applicants, we would be less concerned about the fee schedule. Unfortunately, given restrictive regulations, few legalization applicants are likely to have "open and shut" cases. Many, perhaps most, legalization applications are likely to be difficult; many persons who are clearly eligible are likely to have "marginal" applications, given the proposed rules. In this context, many -- perhaps most -- potential applicants, faced with severe doubts about their ability to qualify, are likely to view \$185 as too high a price to pay for an application that may be denied.

Fourth, the assertion that the magnitude of the benefit received by legalized persons exceeds \$185 is incomplete. It ignores numerous other costs -- medical examinations, counseling or attorney's fees, document searches, notary's fees, and travel -- that applicants must bear. Conservative estimates of the total cost of legalization are a minimum of \$1,000 per individual and \$3,000 for a family of four. It is inconceivable to suggest that costs of this magnitude would not impose hardships on what is widely recognized as a predominantly low-income population, or that such costs would not deter eligible persons from applying.

The National Council has a range of additional concerns regarding the proposed legalization rules, including the provisions covering "continuous

residence," "public charge," work authorization, and the treatment of ineligible spouses and minor children. Our concerns are more fully described in the attached memorandum dated April 8, 1987, and in other comments and memoranda previously made available to the Subcommittee.⁸

If legalization was an individual benefit program, the INS' restrictive approach might be justified. This approach ignores the fundamental premises of legalization, i.e., that a successful program is in the public interest; and that a successful program requires the maximum participation of the eligible population. Absent major changes in the regulations, it is clear that many eligible persons will be deterred from applying; many others will apply only to have their applications denied — not because they fail to meet the statutory criteria — but because of unduly restrictive and burdensome regulations.

C. Capacity and Resources

In order to ensure the optimum level of participation in legalization, Congress included provisions in the Act requiring the Attorney General to recognize certain "Qualified Designated Entities" (QDEs) to engage in outreach, application assistance, counseling, and initial application processing. QDEs are thus supposed to serve three functions. First, they are supposed to encourage the undocumented population to come forward and apply for the program. The experience of other countries suggests that the existence of the QDE structure is essential to overcome potential applicants' fear of exposing themselves to deportation by applying for the program. The history of INS' relationship with immigrant communities in this country confirms the need for a "buffer" between the Service and potential applicants.⁹

Second, QDEs are necessary to assist and counsel potential applicants to prepare applications. It is increasingly clear that, given the complexity of the regulations, the availability of such counseling will play a critical role in determining whether many eligible persons successfully legalize.

Finally, QDEs are a key line of defense against the exploitation of the undocumented population by unscrupulous individuals. In this context, official QDE status would serve as a "Good Housekeeping Seal of Approval"; the target population could seek assistance from any QDE with substantial confidence that appropriate services would be delivered at reasonable cost.

QDEs thus are designed to carry out several functions essential to the success of the legalization program, and would, in effect, serve as the underlying "infrastructure" for legalization. Maximizing the capacity of QDEs to perform these functions is synonymous with maximizing the success of legalization itself. Maximizing capacity, in this sense, requires several interrelated actions:

- Maximizing the number of QDEs providing services to the target population;
- Ensuring that such entities have the resources to deliver high quality services while minimizing cost to the applicants;
- Assisting QDEs to effectively plan and organize their operations so that they can provide effective services from the beginning through the end of the legalization program.

Unfortunately, the initial draft of the Cooperative Agreement issued on February 27, 1987, and even the somewhat improved version issued March 25, 1987, fail to accomplish any of these objectives.

In short, the Cooperative Agreement is unworkable. It provides for a reimbursement of \$15 to the QDE for each completed application submitted. The average outreach and processing costs per applicant -- even if all gather their own documents, fill out their own forms, and need no assistance -- is likely to exceed \$15. Moreover, it is likely that many persons who seek assistance will not complete applications; some will be ineligible, others will eventually need more sophisticated help from an attorney, and still others may choose to file their applications with other entities. QDEs would not be reimbursed for any of the costs associated with serving those individuals who do not file applications with that QDE.

The Cooperative Agreement also allows QDEs to charge counseling fees not to exceed \$75. Under the original Cooperative Agreement, this \$75 "cap" was rigid and absolute; after virtually every potential QDE raised objections,¹⁰ the INS issued a revised agreement exempting certain costs from the "cap." There is some question whether the revised agreement is acceptable. Estimates of counseling costs range from \$100 to \$200 per "average" applicant; with some estimates as high as \$250.¹¹ Complex cases requiring extensive counseling may exceed these estimates. Given the restrictive regulations, the number of "complex" cases may far exceed the number of "average" ones.

The \$15 reimbursement will not cover required costs. The \$75 "cap" may prevent QDEs from recovering counseling costs, especially since virtually all QDEs will establish sliding fee schedules based on ability to pay, and since some applicants will be granted fee waivers.

The effects of this process have been devastating. Many local affiliates of national QDEs have already decided not to become QDEs. Others are still undecided, less than one month before the beginning of the program. Some areas of the country with substantial undocumented populations, e.g. Oakland, California, may have no QDEs at all.

With respect to our own network, the Cooperative Agreement has precluded the participation of all but our strongest affiliates. On February 16 and 17, the National Council hosted an "affiliate consultation" in Washington, D.C. Some 26 Council affiliates paid their own way here to learn how to become QDEs. After hearing the specifics of the then-draft Cooperative Agreement from the INS, 13 immediately decided they could not afford to participate in the program. Since then, we have confirmations from only five groups that intend to seek QDE status.

Mr. Chairman, these are organizations that want and need to participate in the legalization program. During our consultation, many stated that they felt compelled to assist legalization applicants. Most already serve the undocumented

population; it is clear that they will serve the legalized population. These groups believe in legalization. They want very badly for the program to succeed.

Yet, they cannot afford to risk bankruptcy in order to be QDEs. All operate under serious budget constraints; many operate on "shoestring budgets." Most cannot afford to accept a Cooperative Agreement where the only choices would be to deny services to all but those with "open and shut" cases, provide poor quality "assembly line" service under a program that demands individualized attention, or lose money. Ironically, these are the very kinds of organizations needed to make legalization work. They are trusted in their communities, both for the quality of their service and the depth of commitment to their clients.

Some of our affiliates intend to assist legalization applicants, but without QDE status. But others needed the QDE status — and the funding, training and technical assistance that should accompany such status — in order to participate in the program. Those that do participate as QDEs, and those that may do so eventually, will perform effectively. But their effectiveness will be limited by lack of resources and insufficient planning.

The effect of this diminished capacity and the lack of resources will be to undermine the effectiveness of the program, in several key respects:

- Outreach will be significantly reduced. Many persons who might have been encouraged to legalize may choose not to do so in the absence of such outreach efforts;
- Quality of service will be reduced. Agencies operating under the financial constraints imposed by the Cooperative Agreement will have to minimize costs — by lowering salaries, increasing use of unpaid, untrained volunteers, adopt "assembly line" techniques, etc. Given the complexity of the regulations, some applicants who might have qualified may be denied legalization.
- Costs to applicants will increase. Unable to assist those with difficult applications, QDEs will have to refer a larger proportion to attorneys. Typical legal fees will exceed — by at least a factor of two — typical nonprofit agency fees.
- Exploitation of the undocumented will increase. As more nonprofit groups are forced to operate without QDE status, the line between legitimate service providers and unscrupulous,

"fast buck" artists will begin to blur. Insufficient capacity will force many persons to seek assistance wherever they can get it. Many of these persons will be charged exorbitant fees for minimal service; some may be denied legalization as a result. We are already seeing numerous examples of exploitation of the undocumented, which are likely to increase in the absence of sufficient QDE capacity.¹²

It may turn out that, with some critical improvements in the regulations and with the creativity and ingenuity that community-based groups are known for, many QDEs will be able to deliver effective services to most of their clients. It may be that these concerns turn out to be exaggerated. The point is that nobody knows, given the uniqueness of this program. By waiting until March 25 to produce a final version of the Cooperative Agreement, and by imposing unnecessary restrictions on organizations crucial to the success of the program, the INS has already diminished the system's capacity to respond effectively to the challenges posed by legalization, and has truncated an already limited application period.

C. Public Information

On Wednesday, April 8, the INS finally awarded a contract for \$10.7 million to a private firm to carry out its long-awaited public information campaign. The campaign is supposed to inform employers of their obligations under the Act, explain the legalization provisions to the undocumented population and encourage them to apply for the program, and to provide a range of information about the bill to the general public.

While the National Council of La Raza is pleased that the contract finally has been awarded, it represents an extreme example of the old saying "a day late and a dollar short." In fact, this action is "many days late." INS initially suggested that the contract was to have been awarded in February, in order to ensure that information was widely disseminated well before the beginning of the legalization program (May 5, 1987) and the citation period for employer sanctions (June 1, 1987). Instead, there are fewer than 30 days left before legalization begins; 30 days to research, design, prepare, market and disseminate information

on a bill that affects every employer, every person seeking work, perhaps as many as two million potential applicants for legalization, several hundred thousand undocumented farmworkers eligible for the SAWs program, and countless others -- In short, every person in the United States. Given normal six-to-eight week leadtimes required for major advertising campaigns, it appears that a superhuman effort will be required to get the first advertisements on the air before May 5th; and there is barely sufficient time to prepare for the beginning of employer sanctions enforcement.

Moreover, we are troubled by the size of the contract. Initial INS statements suggested that the contract amount would be \$25 million.¹³ Subsequently, INS predicted a figure of \$12-15 million. Now we find the actual contract amount is less than \$11 million. Given the enormous scope and complexity of the Act, and massive public confusion about the new law, the National Council is concerned that \$11 million may not be sufficient.

The lack of effective public information efforts to-date has grave consequences for legalization. Many employers are laying off employees hired prior to the date of enactment even though they are not required to do so.¹⁴ Many of these persons are eligible for legalization, but may be subject to the public charge exclusion if unemployed.

To aggravate matters even further, some ad hoc INS public information efforts have been misleading and inaccurate. One INS spokesperson in California has reportedly stated that:

...Illegal aliens cannot qualify for amnesty if they've been out of the country more than 30 days or for a total of more than 150 days since January 1, 1982.¹⁵

Of course, the official was referring to the preliminary draft rules on the "brief and casual" absences exception for "continuous residence"; the 30/150

day exception has been changed to allow 45/180 day absences in the proposed rules. Presumably, this provision could be changed again. Taken on its face, however, this kind of statement is likely to deter eligible persons from applying, thinking that they do not qualify for the program.

At a recent briefing for employers in a large midwestern city, one employer told me that, when he asked a senior INS District official what he could do to help some of his undocumented employees legalize their status, the official responded by stating, "If you know what's good for you, you'll get rid of all of them."¹⁶

Another INS official has responded to news reports of unnecessary terminations by stating, "...It's certainly nothing we're going to try to prevent."¹⁷

If accurately quoted, these statements are clearly irresponsible and undermine the objective of maximizing participation in the legalization program. Even if these statements are inaccurately quoted, they demonstrate the dangers of relying on sporadic, ad hoc public information efforts.

In summary, overly restrictive regulations, insufficient capacity and resources and inadequate and inaccurate public information efforts already are working synergistically to limit participation in the legalization program. Unless major changes are made, the National Council believes that the very integrity of the program may be threatened.

If the INS' goal is to legalize the smallest number of persons they can get away with, they are succeeding admirably. Such an approach, however, would be inconsistent with the objectives of the program, and hundreds of thousands of otherwise eligible persons will see the promise of legal status turned into a cruel hoax.

III. EMPLOYER SANCTIONS AND DISCRIMINATION

A. Overview

The same themes identified above apply to employer sanctions and employment discrimination as well. Congress recognized the potential for discrimination resulting from employer sanctions, and attempted to minimize this danger by adopting several key provisions:

- A "uniform verification" process, whereby all new hires would be treated equally under employer sanctions;
- A new anti-discrimination system, designed to provide a system of redress for victims of discrimination on the basis of national origin or citizenship; and
- A public information campaign and a six-month information period, to minimize employer confusion that might lead to discriminatory behavior.

Our concerns about discrimination are not merely theoretical, but based on actual experience. Our previous testimony before this Subcommittee and your counterpart in the other body identified empirical data upon which we based our concerns.¹⁸ While it is too early to assess in a systematic way the scope of such discrimination, preliminary data suggest that Hispanics already may be suffering from acts of employer sanctions-related discrimination.

For example, a recent report of a statewide task force in New York identified more than 60 alleged cases of discrimination resulting from the Act.¹⁹ One Texas rancher was recently quoted in published reports as stating:

We're going to be real careful about hiring Hispanics, at least I am, because a lot of them appear legal and they're not. This wetback that just left me has a driver's license and a Social Security card, and I know damn well that he was wet.²⁰

We are receiving additional reports about discrimination from the press, other national civil rights groups, and our affiliates as well. While we hope we are wrong, we believe that such incidents are only the "tip of the iceberg," representing widespread employment discrimination against Hispanics and others, who

on the basis of skin color, speech accent, or other physical characteristics, appear "foreign" to employers.

B. Regulations

Specific issues raised by the proposed regulations implementing the Office of Special Counsel will be covered by other witnesses, are included in the attached memorandum, and will be addressed in the Council's formal comments on the proposed rules.

I wish to address here a fundamental issue raised by the failure of the employer sanctions rules published on March 19 to even mention critical protections against discrimination included in the Act. In attempting to ensure uniform treatment of all individuals hired, Section 274(b)(1)(A) of the Act states:

If an individual provides a document or combination of documents that reasonably on its face appears to be genuine and that is sufficient to meet the requirements [of the verification provision, i.e., proving identity and work authorization], nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

The legislative history of this section clarifies its intent:

...If the verification requirement procedure is followed, the language is intended to make clear that there is no requirement that an employer request additional documentation or that the employee produce additional documentation.... [D]ocuments that reasonably appear to be genuine should be accepted by employers without... further investigation of those documents.²¹

Despite numerous requests for the inclusion of this language in the regulations and on the I-9 Form used to verify employees, the proposed rules and the draft I-9 are silent on this issue.²² Omission of this statutory language amidst widespread misunderstanding of the law unnecessarily risks the kind of discrimination that the uniform verification process seeks to minimize.

Failure to clarify employer responsibilities risks the imposition of clearly discriminatory practices, e.g., "citizens only" hiring policies or more subtle requirements, e.g., "passports only" policies or English fluency tests,

but encourages employers who fear sanctions to apply stricter scrutiny to documents provided by persons who appear "foreign."

C. Capacity and Resources

To the extent that sanctions lead to increased employment discrimination, it is clear that the capacity and resources to address such discrimination is inadequate. The Equal Employment Opportunity Commission (EEOC) has, to its credit, issued a strong statement warning employers about their liability for discriminatory behavior, although, based on experience, we remain skeptical about EEOC's ability to effectively address employment discrimination against Hispanics.²³

The Justice Department, however, has been dragging its feet in establishing the Office of Special Counsel. Despite the fact that the anti-discrimination provisions of the Act were effective immediately upon enactment, a Special Counsel has not been appointed, and proposed regulations were issued on March 23, about five months after the date of enactment. The attached memorandum and other witnesses will describe in greater detail the effects of the delay in establishing the Office of Special Counsel and the failure to issue timely regulations.

D. Public Information

As with legalization, the failure of the INS to implement an effective public information effort is exacerbating regulatory and capacity problems. The evidence cited above suggests that many employers are responding to the sanctions provisions in ways that discriminate against Hispanics and others who fit immigrant stereotypes.

In addition, we fear that many persons authorized to work are not yet fully aware of their obligations under the sanctions provisions. Persons born outside of hospitals -- as is common in the rural South and Southwest and in some parts of Puerto Rico -- may not be able to easily prove their identity unless they are able to acquire documents. Certain "derivatively" naturalized citizens may lack

documentary proof of their citizenship, and cannot obtain it without lengthy delays. Still others may have lost birth certificates or other documents, and may not be aware of their legal obligations under employer sanctions. These persons need to be informed immediately of their obligations and procedures for obtaining needed documents. The failure to provide timely notice to these persons may prevent them from obtaining employment, a right they are legally and morally entitled to.

I have spoken recently before employer groups, civil rights agencies, community organizations, and student groups in Michigan, Missouri, Detroit, Texas, and here in Washington. At every location, I have been shocked at the appalling level of misunderstanding about employer sanctions. Many persons still believe that sanctions apply only to Hispanics, or immigrants, or "foreigners." This lack of public misunderstanding threatens to aggravate levels of discrimination; many persons victimized by such discrimination may never be aware they've been discriminated against, may have no avenue for effective redress, and, as a result, may suffer irreparable harm.

IV. RECOMMENDATIONS

The National Council of La Raza believes that time still remains to address many of the problems cited above. With respect to legalization, we urge the Subcommittee to encourage the INS to:

- Remove the unnecessarily restrictive and burdensome aspects of the proposed regulations;
- Negotiate in good faith with potential QDEs to ensure the workability of the Cooperative Agreement; and
- Expand the scope of the proposed public information campaign and immediately cease the dissemination of misleading or inaccurate information.

We also believe it critical that the INS review its own attitudes toward legalization. If the Service continues to approach legalization as a necessary

evil, or as subordinate to its enforcement mandate, legalization cannot succeed. The INS must determine, as a matter of its own internal policy, that legalization is in the public interest, and that a successful program requires the maximum participation of the eligible population. Further, this policy must be communicated clearly to all INS staff, unequivocally and without reservation. In the absence of this kind of commitment, we fear that legalization in this country will resemble the largely unsuccessful programs in other countries.

With respect to employer sanctions and discrimination, we wish to incorporate by reference the recommendations in the attached memorandum; we further recommend that:

- . The INS insert the above-referenced clause clarifying employer and employee obligations into the final rules and the I-9 Form; and
- . The INS make special efforts to discourage discrimination resulting from the Act by including appropriate warnings to all employers in public information materials, and the instructions accompanying the I-9 Form.

With respect to Congressional action, we recommend that:

- . This Subcommittee urge the Appropriations Committee to fully fund the legalization provisions of the Act, including:
 - .. Additional funding for QDEs; and
 - .. Additional funding for public information.
- . This Subcommittee carry out vigorous oversight activities, including:
 - .. A series of field hearings, to observe first-hand the problems with the implementation of the Act; or
 - .. At a minimum, witnesses from local communities to provide testimony on the status of implementation in their areas.

Finally, we have received indications that some members and Congressional staff are skeptical of the difficulty applicants are having in legalizing their status. We would therefore invite these skeptics to counsel and assist at least

two legalization applicants on a pro bono basis. We believe that "real world" experience will convince even the greatest skeptics of the difficulty in preparing a successful legalization application. We would be happy to coordinate such activity, in conjunction with local community groups.

On behalf of the National Council of La Raza, I wish to repeat our appreciation for the opportunity to testify. As always, we stand ready to assist the Subcommittee in its work.

ENDNOTES

1. See Select Commission on Immigration and Refugee Policy, U.S. Immigration and Refugee Policy and the National Interest: Final Report and Recommendations, 1981; Senate Report 99-132, 99th Congress, 1st Session; House Report 99-682, Part 1, 99th Congress.
2. Doris Meisner, Demetrios Papademetriou, David North, Legalization of Undocumented Aliens: Lessons From Other Countries, 1987.
3. The literature is replete with examples of the "reverse flow" of immigrants prior to the holiday season. See, for example, Anne Erlich and Paul Erlich, The Golden Door, 1979.
4. "Lure of Amnesty Takes Painful Toll on Families," Dallas Times Herald, March 24, 1987 (case of Jesus Bustos); "The Paradox of Amnesty," Dallas Times Herald, March 22, 1987 (cases of Abelardo Lazalde, Jose Montoya).
5. Jonathan Lamb, cited in "Amnesty Sending Fearful Aliens for Help, Only Some of It Useful," New York Times, January 15, 1987.
6. "The Other Side of the Border," KERA-TV, (PBS Documentary), forthcoming, May 1987.
7. Muzaffar Chishti, attorney with the International Ladies Garment Workers Union, April 4, 1987.
8. See, for example, U.S. Catholic Conference (and 25 national organizations), Comments on Preliminary Draft Regulations, February 5, 1987; American Immigration Lawyers Association, Comments on Preliminary Draft Regulations on Legalization, February 5, 1987; Letter of Raul Yzaguirre to Alan Nelson, February 5, 1987; Memorandum of Hogan and Hartson, "Analysis of Eligibility and Waiver Standards of the Immigration Reform and Control Act of 1986," February 17, 1987.
9. Dan Purtell, "The Immigration and Naturalization Service: An Analysis of Its Reforms and Subsequent Effects on Hispanics," National Council of La Raza, June 1986; (undergoing revision) revised version forthcoming, 1987.
10. Letter from U.S. Catholic Conference (and 28 national organizations) to Alan Nelson, March 10, 1987. See also, "National and community organizations raise deep concerns....," press release, U.S. Catholic Conference, March 10, 1987.
11. "Preliminary Analysis of Legalization Costs," National Council of La Raza, forthcoming, April 1987.
12. "Officials Expect Increase in Legal Horror Stories," Dallas Times Herald, March 25, 1987.
13. "Is INS Destined to Lose Legalization Battle Too?"; Ibid; the piece states:

The INS plans to spend \$25 million on advertising campaigns to make illegals believe that amnesty is the chance of a

lifetime, [Steve] Martin said. (Martin is Southern Regional Commissioner for INS.)

14. "Alien Dismissals Reported In State," New York Times, January 25, 1987; "U.S. Migrant Law Falls Hard on Jobless In Central Mexico," Washington Post, March 3, 1987; "Legal Confusion Disrupts Area Salvadorans' Lives," Washington Post, March 2, 1987.
15. "INS Says Registration Good For All," Eastside Sun (Los Angeles), January 22, 1987 (quoting Joe Flanders, spokesperson for Western Region of INS).
16. Employer requested anonymity; conversation on March 23, 1987.
17. "Legal Confusion....," op. cit.
18. Testimony of Raul Yzaguirre, Senate Hearings, Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy, June 17, 1985; Statement of Raul Yzaguirre, House Hearings, Committee on the Judiciary, Subcommittee on Immigration, Refugees and International Law, October 1, 1987.
19. "The Immigration Reform and Control Act of 1986: New York's Response," Inter-Agency Task Force on Immigration Affairs, March 1, 1987.
20. "Rights Groups Fear Resurgence of Bias In Hiring," Dallas Times Herald, March 26, 1987.
21. House Report, op. cit.
22. International Ladies Garment Workers Union (and 26 national organizations), Comments on Preliminary Draft Regulations on Employer Sanctions, February 5, 1987; American Civil Liberties Union, Comments on Preliminary Draft Regulations for the Employer Sanctions Provisions of the Immigration Reform and Control Act of 1986, undated; letter from Raul Yzaguirre to Alan Nelson, op. cit.
23. Letter of Michael Martinez, cited in Congressional Record, May 17, 1983. Martinez, then Deputy General Counsel for EEOC, characterized the Commission's record on behalf of Hispanics as "worse than dismal."